

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE: §
§
SKYPORT GLOBAL § **CASE NO. 08-36737-H4-11**
COMMUNICATIONS, INC., §
§
DEBTOR § **Chapter 11**

OBJECTION TO MOTION FOR EXPEDITED CONSIDERATION
(Docket #309)

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

SKYPORT GLOBAL COMMUNICATIONS, INC. ("Debtor" or "SkyPort"), Debtor in this Chapter 11 case, hereby objects to the motion for expedited consideration of the Motion to Terminate Exclusivity filed by Draco Capital, Inc. (Docket No. 309, the "Motion"). The grounds for this response are as follows:

Summary

1. The Motion does not comply with BLR 9013 because it fails to state the basis for emergency consideration and fails to contain a verified statement of what facts justify emergency consideration. Had such facts been stated, they would not have been sufficient to justify emergency consideration as this entity (and its principal) have been aware of the Debtor's bankruptcy since inception, and yet have delayed taking any action until the eve of confirmation. Further, they have circulated a "Draco Plan" in violation of 11 U.S.C. §1121 and §1125.

Factual Background

2. In order to understand the context of the pleadings filed by Draco, the Court needs to understand exactly who Draco is and what it is trying to accomplish.

3. Draco is a private equity fund owned and controlled by Mr. Adrien Pouliot. Mr. Pouliot was one of the members of the Debtor's board of directors who voted to place the Debtor in Chapter 11 on October 23, 2008. Attached as Ex. A. is a copy of the Board Resolution.

4. At the commencement of the case, the Debtor was in dire need of DIP financing. Mr. Pouliot agreed to be one of the DIP lenders and the Court entered an order approving Mr. Pouliot as one of the DIP lenders. See Doc. 32.

5. Ultimately, Mr. Pouliot reneged on his agreement to be a DIP lender and the Debtor was forced to file a motion to amend the DIP Order to provide that Balaton would be the DIP Lender. See Doc. 81. Balaton is the majority shareholder of the Debtor's parent and is operated by Mr. Robert Kubbernus who is the Debtor's CEO. This motion to amend was approved by the Court (see Doc. 99) and the DIP loan was funded by Balaton.

6. Despite being aware of the existence of the case since its inception, neither Draco nor Mr. Pouliot were heard from again until July 31, 2009, one day after the Debtor filed an agreed Plan Modification resolving disputes with its major secured creditors, Aegis Texas Venture Fund ("Aegis") and CenturyTel which virtually assure plan confirmation.

7. After the filing of this Plan Modification, Draco and Pouliot rushed into action with an attempt to derail the plan by sending an alternative plan proposal to the undersigned with copies to Aegis and CenturyTel. A copy of this proposal is attached as Exhibit B. This alternative proposal was sent without obtaining approval of an adequate disclosure statement in violation of 11 U.S.C. §1125(b) and without obtaining termination of exclusivity in violation of 11 U.S.C. §1121(b). The alternative proposal caused Aegis to renege on its agreement to vote in favor of the plan as modified.

8. Further, Draco and Pouliot filed an Objection to Confirmation (Doc. 293), even though Draco is not a creditor or party in interest; attempted to purchase a small general unsecured claim (Doc. 298); filed a motion to terminate exclusivity (Doc. 306), which does not comply with the local rules; and filed this motion for expedited consideration (Doc. 309), which likewise does not comply with the local rules.

9. Draco's motion seeks to terminate exclusivity¹ to file a competing plan only days before the confirmation hearing. Draco's motion is, most importantly, simply dead wrong on the facts.

Expedited Consideration Should be Denied

10. A party is guaranteed the right to both substantive and procedural due process under the Constitution. Procedural due process requires notice and a reasonable opportunity to be heard. Although the required procedures may vary according to the interests at stake in a particular context, *Boddie v. Connecticut*, 401 U.S. 371, 378 (1971), the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)).

11. Due Process requires that there be an opportunity to form a defense to the Motion to Terminate Exclusivity – a motion filed by an insider who deliberately waited until the last possible minute to file his motion. The insider expects the Debtor to respond in only 3 days. The other creditors and parties in interest are also expected to respond in less than three days – an impossible feat since they were only mailed the motion by regular mail. A meaningful time to

¹ The Motion also claims that exclusivity terminated. Apparently, even Draco doesn't believe this is true, hence the Motion.

respond is impossible.

12. To obtain expedited consideration, the movant must show that the prejudice caused by the expedited consideration is substantially outweighed by the interests of justice and that the emergency is not one of its own creations.

13. Here, the alleged emergency is that Draco wants to propose an alternative plan three days before confirmation of what was a consensual plan of reorganization arrived at after lengthy and difficult negotiations. This desire simply does not rise to the level of an emergency.

14. Further, the “last minute” nature of the relief is entirely Draco’s own fault as it has been aware of the case since inception.

15. The Court should not grant consideration on an emergency basis. The Court should consider the motion on a 20 day notice. There is massive prejudice to the Debtor and creditors by countenancing the violation of 11 U.S.C. §1125 and §1121.² The Debtor is days away from plan confirmation. The motion was filed as a transparent, last-minute attempt to derail confirmation of the Debtor’s plan.

² Other courts have dealt with actions quite similar to the unauthorized transmission of a plan proposal like the “Draco’s Plan” on Exhibit B. A similar situation happened in *Colorado Mountain Express, Inc. v. Aspen Limousine Serv., Inc.* (*In re Aspen Limousine Serv., Inc.*), 198 B.R. 341, 348-49 (D. Colo. 1996). That court found that sending a plan proposal while soliciting a negative vote violated § 1125(b) and the District Court affirmed criminal contempt sanctions. The court observed that while some courts may allow suggestions in “good faith” negotiations, sending letters to creditors with a competing plan and seeking a negative vote during the exclusivity period is bad faith.

In the similar case of *In re: Clamp-All*, 233 B.R. 198, the Court dealt with an insider (like Mr. Pouliot) who sent an unauthorized plan proposal to creditors urging them to vote against the Debtor’s plan. The result was that the court *sua sponte* equitably subordinated the claims of the would-be proponents and two insiders were forbidden from filing a competing plan. Likewise, *In re: Temple Retirement Community, Inc.* 80 B.R. 367 (Bankr. W.D. Tex. 1987) (L. Clark, J.) Judge Leif Clark rejected an attempt to suggest an alternative plan while seeking a negative vote, stating “[Public] policy could be undermined by thinly veiled suggestions of better alternatives, unsupported by full disclosure.”

Conclusion

16. The Motion is flawed factually and procedurally. Procedurally, there is no evidence or declaration justifying emergency consideration.

17. Factually, the motion fails. The reason given for emergency consideration is no excuse for depriving parties of the opportunity to have reasonable notice and procedural due process:

Such expedited consideration is necessary because this Court is considering confirmation of SkyPort Global Communications, Inc.'s plan of reorganization on August 7, 2009 and Draco respectfully requests that this Court take into consideration the potential for a competing plan of reorganization by Draco.

Motion at page 1.

18. This is especially true since Mr. Pouliot has been part of this case since inception, yet his company waited until the last minute to participate in the case. The case is ready for confirmation and the last-minute "Draco Plan" circulated in violation of 11 U.S.C. §1121 and 1125 is no justification for emergency consideration.

WHEREFORE, PREMISES CONSIDERED, the Debtor requests that the Court deny Docket #309, and grant such other and further relief to which it may show itself justly entitled.

DATED: August 4, 2009

Respectfully submitted,

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: /s/ Hugh M. Ray, III
EDWARD L. ROTHBERG
State Bar No. 17313990
HUGH M. RAY, III
State Bar No. 24004246
Eleven Greenway Plaza, Suite 1400
Houston, Texas 77046
Telephone: (713) 961-9045
Facsimile: (713) 961-5341

ATTORNEYS FOR DEBTOR

Certificate of Conference

I certify that I conferred telephonically in good faith with both counsel for the Movant on August 4, 2009 about the relief sought. The conference lasted about five minutes, and we were unable to agree.

Dated: August 4, 2009

/s/ Hugh M. Ray, III

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served via electronic mail, and/or U.S. first class mail, postage prepaid, on August 4, 2009, (or the next business day) to the parties on the service list.

/s/ Hugh M. Ray, III

HUGH M. RAY, III

MASTER SERVICE LIST
SkyPort Global Communications; Debtor
Case # 08-36737-H4-11

Skyport Global Communications, Inc.
11140 Aerospace Ave
Houston, TX 77034

Harris County, et al.
c/o John P. Dillman
Linebarger Goggan Blair & Sampson
P O Box 3064
Houston, TX 77253-3503

Internal Revenue Service
Insolvency Section
1919 Smith MAIL STOP HOU 5022
Houston, TX 77002

Internal Revenue Service
PO Box 21116
Philadelphia, PA 19114

Stephen Statham
Office of the U. S. Trustee
515 Rusk, Room 3516
Houston, TX 77002

William A. Frazell
Assistant Attorney General
Bankruptcy & Collections Division
PO Box 12548
Austin, TX 78711-2538

Securities & Exchange Commission
Attn: Angela Dodd
175 W. Jackson Blvd, Suite 900
Chicago, IL 60604-2908

Paul Bettancourt
P. O. Box 4622
Houston, TX 77210-4089

Pasadena I.S.D.
Tax Assessor-Collector
2223 Strawberry Rd.
Pasadena, TX 77501

Balaton Group, Inc.
11140 Aerospace Ave
Houston, TX 77034

Farnum Street Financial
Attn: Ross Abrams
240 Pondview Plaza
5850 Opus Parkway
Minnetonka, MN 55343

AEGIS Texas Venture Fund, LP
Attn: Kevin Dragan
11000 Richmond, Suite 550
Houston TX 77042

CenturyTel, Inc.
Attn: Stewart Ewing, CFO
100 CenturyTel Drive
Monroe, Louisiana 71203

CenturyTel, Inc.
c/o Rex D. Rainach
A Professional Law Corporation
3622 Government Street
Baton Rouge, LA 70806-5720

Brad Lee
Bankruptcy Specialist
XO Communications, LLC
105 Malloy Street
Nashville, TN 37201

Intelsat USA Sales Corp.
Attn: Chris Nibecker
3400 International Drive NW
Washington DC 20008

Telesat Network Services, Inc.
Attn: Richard O'Reilly
1601 Telesat Court
Ottawa
Ontario, Canada ON K1B 5P4

EchoStar Corp.
Attn: Rhonda Parson
90 Inverness Circle East
Englewood, CO 80112

SES New Skies Satellites, BV
Attn: Scott Sprague
2001 L Street, Suite 800
Washington, DC 20036

AboveNet
Attn: Thomas L. Kelly
360 Hamilton Ave., 7th Floor
White Plains, NY 10601

The Spaceconnection, Inc.
Attn: Deborah Williams
PO Box 6067
Burbank, CA 91510-6067

Klabzuba Properties, Ltd.
Attn: Robert B. Higgs
14405 Walters Road, Suite 800
Houston, TX 77014

VT iDirect Inc.
Attn: Geneza Simoes
13865 Sunrise Valley Drive
Herndon, VA 20171

Alpheus Communications, L.P.
Alpheus Data Services
c/o Stephen W. Crawford, General Counsel
1301 Fannin Street, 20th Floor
Houston, TX 77002

Seyfarth Shaw LLP
Attn: Christina Putnam
700 Louisiana, Suite 3700
Houston, TX 77002

Longbottom Communications
Attn: Penelope Longbottom
2343 N. Vernon St.
Arlington, VA 22207

CompuCom
Attn: Minnie Morrison
7171 Forest Lane
Dallas, TX 75230

Houston Airport System
Attn: Scott Feldman
City of Houston
PO Box 60106
Houston, TX 77205-0106

DataPath, Inc.
Attn: Betty Herrington
3095 Satellite Boulevard
Duluth, GA 30096

Wilkinson, Barker, Knauer LLP
Attn: Bob Primosch.
2300 N Street NW, Suite 700
Washington, DC 20038-1128

AEGIS Texas Venture Fund, LP
c/o Kyung Lee / Jason Rudd
Diamond McCarthy Taylor Finley & Lee
909 Fannin, Suite 1500
Two Houston Center
Houston, Texas 77010

Farnam Street Financial, Inc.
c/o Larry B. Ricke
Spence, Ricke, Sweeney & Gernes
Suite 600, Degree of Honor Building
325 Cedar Street
St. Paul, MN 55101

Intelsat, Ltd.
c/o Herrick Feinstein LLP
Attn Stephen Selbst
Two Park Avenue
New York, NY 10016

Intrado, Inc.
Attn: Elaine Stuart
1601 Dry Creek Drive
Longmont, CO 80503

Verizon Wireless
P.O. Box 3397
Bloomington, IL 61702

Brett J. Kitei
Corporate Counsel
DISH Network L.L.C.
9601 South Meridian Boulevard
Englewood, Colorado 80112

iDirect, Inc.
c/o H. Jason Gold / Dylan G. Trache
Wiley Rein LLP
7925 Jones Branch Drive, Suite 6200
McLean, VA 22102

Robert Half Technology
Attn: Ron Ravin
5720 Stone Ridge, Suite 3
Covington, CA 94588

XO Communications
Attn: Scott Harrison
2401 Portsmouth, Suite 200
Houston, TX 77098

Verizon Wireless
Attn: Alexis B. Murray
PO Box 660108
Dallas, TX 75266-0108

Balaton Group, Inc.
Seyfarth Shaw LLP
Attn: Walter Cicack
700 Louisiana, Suite 3700
Houston, TX 77002

Digital Networks, LLC
c/o William H. Hoch, III
Crowe & Dunlevy
20 N. Broadway, Suite 1800
Oklahoma City, OK 73102

Cisco Capital
c/o Thomas M. Gaa
Bialson, Bergen & Schwab
2600 El Camino Real, Suite 300
Palo Alto, California 94306

William R. Greendyke
Jason L. Boland / Travis A. Torrence
Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
Houston, TX 77010

Deloitte & Touche LLP
Attn Francesca Filippelli, Sr. Legal Specialist
30 Wellington Street West
P O Box 400, Stn Commerce Court
Toronto, ON M5L 1B1, Canada

Ambius
P.O. Box 95409
Palatine, IL 60095-0409

Pasadena Independent School District
c/o Law Office of Dexter D. Joyner
4701 Preston Ave.
Pasadena, TX 77505

Globecomm Systems Inc
Attn: Julia Hanft, General Counsel.
45 Oser Avenue
Hauppauge, NY 11788

PAETEC
c/o Shannon I. Sullivan
Specialist - Revenue Assurance
PO Box 3177
Cedar Rapids, IA 52406-3177

Sunrise Campus Investors dba
BPG Properties, Ltd
Attn: Roger Bycroft & Keith Knight
11130 Sunrise Valley Drive, Suite 100
Reston, VA 20191

SES New Skies Satellites, Inc.
c/o Philip W. Allogrammo III
Stephen V. Falanga / Connell Foley LLP
85 Livingston Ave.
Roseland, NJ 07068

Patrick K. Brant
10186 Hillington Court
Vienna, VA 22182

Michael R. Rochelle / Kathleen M. Patrick
Rochelle McCullough LLP
325 N. St. Paul St., Suite 4500
Dallas, TX 75201

Alpheus Data Services, LLC
c/o William R. Greendyke
Jason L. Boland / John D. Cornwell
Fulbright & Jaworski LLP
1301 McKinney, Suite 5100
Houston, TX 77010

Digital Networks, LLC
c/o John F. Higgins
Porter & Hedges, LLP
1000 Main Street, 36th Floor
Houston, TX 77002

Advanced Projects International Inc.
c/o Calvin Braun
Adair & Myers, PLLC
3120 Southwest Freeway, Suite 320
Houston, TX 77098

Advanced Projects International Inc.
c/o Kenneth English
Gaw, Van Male, Smith, Myers & Miroglia
1000 Main Street
Napa, CA 94559

Drillsite Broadcast Co.
c/o Collin D. Porterfield
Law office of Collin D. Porterfield
5956 Sherry Lane, Suite 1616
Dallas TK 75225

John E. Mitchell
Vinson & Elkins L.L.P.
2001 Ross Avenue, Suite 3700
Dallas, TX 75201-2975

Data Technology Solutions, LLC
c/o Bryan E. Lege
Kraft Gatz Lane Benjamin LLC
600 Jefferson St., Suite 410
Lafayette, LA 70501

Gloster Holdings, LLC
c/o Samuel Goldman & Associates
100 Park Avenue, 20th Floor
New York, NY 10017

San Jacinto Community College Dist.
Attn: Daniel J. Snooks
11550 Fuqua, Suite 490
Houston, TX 77034

John C. Ivascu
Vinson & Elkins LLP
1001 Fannin Street, Suite 2500
Houston, TX 77002-6760